

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

DAVID DAVIS,)	
)	
Plaintiff,)	
)	
vs.)	CIVIL ACTION NO. 3:06-cv-00544-WHA
)	
PHENIX CITY, ALABAMA, <u>et al.</u>)	
)	
)	
Defendants.)	
_____)	

**PLAINTIFF'S MOTION IN LIMINE NO. 3 TO EXCLUDE
EVIDENCE OF FINANCIAL IMPACT**

Plaintiff hereby moves this Court for an order barring Defendant from adducing evidence of any financial impact that a damage award, including a back pay award, would have on the operations or finances of Phenix City. The potential impact that a damage award, including a back pay award, would have on the operations or finances of Phenix City is wholly irrelevant to the defendant's liability for such damages under the First Amendment. Brennan v. State of Iowa, 494 F.2d 100, 104 (8th Cir. 1974), cert. denied, Iowa v. Dunlop, 421 U.S. 1015 (1974); Wirtz v. Malthor, 391 F.2d 1, 3 (9th Cir. 1968); Wirtz v. Flame Coal Company, 321 F.2d 558, 561 (6th Cir. 1963). Moreover, any proffered evidence that a damages award would result in financial hardship on Phenix City would create undue prejudice and potentially inflame the passions of the trier of fact.

Given this potential for prejudice, and the immateriality of such evidence to the issue of liability, Plaintiff respectfully requests that Defendant be precluded from

proffering any evidence regarding the impact that a damages award would have upon the operations or finances of Phenix City.

Respectfully submitted,

s/ Douglas L. Steele
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Plaintiff,)	
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vs.)	CIVIL ACTION NO. 3:06-cv-00544-VPM
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PHENIX CITY, ALABAMA, <u>et al.</u>)	Judge W. Harold Albritton
)	
Defendants.)	
_____)	

CERTIFICATE OF SERVICE

This is to certify that one true and accurate copy of Plaintiff's Motion in Limine was electronically filed on the following counsel for defendant on this 18th day of February, 2008:

James R. McKoon, Jr.
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/s/ Douglas L. Steele
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